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8 ENERGY HOLDINGS LLC, and MACPHERSON  
OIL COMPANY  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA  
11

12 CENTER FOR BIOLOGICAL  
DIVERSITY, and SIERRA CLUB, non-  
13 profit corporations,

14 Petitioners,

15 vs.

16 CALIFORNIA DEPARTMENT OF  
CONSERVATION, DIVISION OF OIL,  
17 GAS, AND GEOTHERMAL  
RESOURCES; and DOES 1 through 20,  
18 inclusive,

19 Respondents.  
20

21 AERA ENERGY LLC, BERRY  
PETROLEUM COMPANY LLC,  
22 CALIFORNIA RESOURCES  
CORPORATION, CHEVRON U.S.A.  
23 INC., FREEPORT-MCMORAN OIL &  
GAS LLC, LINN ENERGY HOLDINGS  
24 LLC, and MACPHERSON OIL  
COMPANY,  
25

26 Respondents-in-Intervention.  
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Case No. RG15769302

Assigned for all purposes to the Hon. George C.  
Hernandez, Dept. 17

**RESPONSE TO PETITIONERS'  
EVIDENTIARY OBJECTIONS AND  
MOTION TO STRIKE PORTIONS OF  
DECLARATION OF NATHANIEL  
JOHNSON IN SUPPORT OF MOTION  
FOR LEAVE TO INTERVENE BY AERA  
ENERGY LLC, BERRY PETROLEUM  
COMPANY LLC, CALIFORNIA  
RESOURCES CORPORATION,  
CHEVRON U.S.A. INC., FREEPORT-  
MCMORAN OIL & GAS LLC, LINN  
ENERGY HOLDINGS LLC, AND  
MACPHERSON OIL COMPANY**

Date: June 15, 2015  
Time: 2:30 p.m.  
Dept.: 17

Action Filed: May 7, 2015  
Trial Date: None set

## I. INTRODUCTION

The evidentiary objections and motion to strike raised by Petitioners should be denied. The portions of the Declaration of Nathaniel Johnson (“Johnson Declaration”) in Support of Motion for Leave to Intervene by Aera Energy LLC, Berry Petroleum Company LLC, California Resources Corporation, Chevron U.S.A. Inc., Freeport McMoRan Oil & Gas LLC, LINN Energy Holdings LLC, and Macpherson Oil Company (collectively, “Energy Companies”) and the accompanying exhibits identified by Petitioners in their objection are relevant and proper.

The portions of the Johnson Declaration objected to by Petitioners are clearly relevant to the question of whether this Court should grant the Motion for Leave to Intervene. The contested exhibits are pleadings and orders from two recent cases involving Petitioners, DOGGR, and parties from the oil and gas industry. (See Johnson Decl., ¶¶ 2–3, 5–7.) Rather than invoke these pleadings and orders for their “precedential value,” the Energy Companies use these exhibits to establish that DOGGR would not be able to adequately represent the Energy Companies’ interests in this litigation. (See Motion for Leave to Intervene at pp. 7:1–8:2.) Proving inadequate representation by the existing parties is an essential element of mandatory intervention. (Code Civ. Proc. § 389, subd. (b).)

The contested exhibits are obviously relevant to the Motion for Leave to Intervene as they “hav[e] any tendency in reason to prove . . . any disputed fact that is of consequence to the determination of the action.” (Evid. Code § 210.) This Court has made clear that evidentiary objections should not be raised unless the “items of evidence are legitimately in dispute.” (General Guidelines for Litigating in Dept. 17, June 17, 2014.) Petitioners do not come close to raising a legitimate dispute about the relevance of these exhibits, and the “evidentiary objections are unnecessary.” (*Ibid.*) Petitioners’ evidentiary objections and motion to strike should thus be denied.

## II. ARGUMENT

Petitioners have raised objections to five (5) portions of the Johnson Declaration and the accompanying exhibits. These portions and exhibits include: (1) the Order Granting Motion for Leave to Intervene by Western States Petroleum Association, California Independent Petroleum Association, and Independent Oil Producers Agency, *Center for Biological Diversity, et al. v. California Department of Conservation, Division of Oil, Gas, and Geothermal Resources* (Super. Ct.

1 Alameda County, 2014, No. RG12652054) (hereafter *CBD* Litigation); (2) the Order Granting  
2 Defendants-Intervenors Western States Petroleum Association, California Independent Petroleum  
3 Association, and Independent Oil Producers Agency Motion to Dismiss or, Alternatively, for  
4 Judgment on the Pleadings, *CBD* Litigation; (3) the Ruling on Demurrer by Real Party in Interest  
5 Aera Energy LLC to Association for Irrigated Residents, Center for Biological Diversity, and Sierra  
6 Club's Verified Petition for Writ of Mandate *Association of Irrigated Residents, et al. v. California*  
7 *Department of Conservation, et al.* (Kern County Sup. Ct., Case No. S-1500-CV-283418) (hereafter  
8 *AIR* Litigation); (4) the Demurrer by Real Party in Interest Aera Energy LLC to Association for  
9 Irrigated Residents, Center for Biological Diversity, and Sierra Club's Verified Petition for Writ of  
10 Mandate, *AIR* Litigation; and (5) the Demurrer by Respondent to Verified Petition for Writ of  
11 Mandate, *AIR* Litigation. (Johnson Decl., ¶¶ 2–3, 5–7; see also Evidentiary Objections and Motion to  
12 Strike ("Objections") at pp. 1:14–2:2, 3:15–23, filed June 10, 2015.) Together, these documents  
13 demonstrate that oil and gas interests were affected in prior cases similar to the present matter, that  
14 successful arguments were made by members of the oil and gas industry in those prior cases, and that  
15 DOGGR was unable or unwilling to make those successful arguments.

16       Petitioners' objections to these portions of the Johnson Declaration completely misunderstand  
17 the probative value of the accompanying exhibits. Contrary to Petitioners' assertions, the Energy  
18 Companies are not pointing the Court to these prior pleadings and orders for their "precedential  
19 value" or for an "inadmissible legal conclusion." (Objections at pp. 2:6, 3:6–7.) The Energy  
20 Companies are certainly not arguing this Court is "bound . . . by prior superior court cases." (*Id.* at p.  
21 3:3–4.) Nor are the Energy Companies asking this Court to consider the substantive value of a  
22 demurrer that "is not even before this Court." (*Id.* at p. 4:3–4.)

23       Instead, the Energy Companies have brought these prior pleadings and orders before the  
24 Court to establish the straightforward proposition that DOGGR does not always adequately represent  
25 the Energy Companies' interests in similar litigation. (See Motion for Leave to Intervene at pp. 7:1–  
26 8:2.) This showing of inadequate representation by DOGGR is a necessary component of the Energy  
27 Companies' Motion for Leave to Intervene. (Code Civ. Proc. § 389, subd. (b).) The recent actions  
28 by DOGGR in similar litigation that affected the Energy Companies' interest in oil and gas

1 production has significant probative value for the question of whether DOGGR will adequately  
2 represent those same interests in this litigation. Petitioners never suggest otherwise.

3 Introduction of the contested exhibits will not prejudice Petitioners or confuse the issues of  
4 this case. (See Objections at p. 3:5–6.) The Petitioners thus do not risk any prejudice simply because  
5 The Energy Companies have invoke these exhibits to establish the discrete point that DOGGR cannot  
6 be expected to adequately represent the Energy Companies’ interests in this litigation, and Petitioners  
7 thus do not risk any prejudice. Far from confusing the issues, the contested exhibits provide  
8 probative historical context for a question—adequate representation in upcoming litigation—that  
9 usually “requires clairvoyance beyond the trial court’s expertise.” (*Cnty. of Imperial v. Superior Ct.*  
10 (2007) 152 Cal.App.4th 13, 38.)

11 Petitioners’ attempt to strike some of the contested exhibits pursuant to Rule of Court 8.1115  
12 is ineffective. As an initial matter, rule 8.1115 applies to the “Publication of Appellate Opinions,”  
13 not to prior pleadings and orders from the Superior Court. Further, even if the contested exhibits  
14 have “no precedential value” and are “without any precedential value or binding force” (Objections at  
15 p. 2:22–26), the prior cases are still probative of an essential element of the Energy Companies’  
16 Motion for Leave to Intervene. The exhibits can demonstrate that DOGGR failed to raise an  
17 argument that was successful in another Superior Court in a similar matter, without binding the Court  
18 to the prior decisions.

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2 **III. CONCLUSION**

3 For the foregoing reasons, the Petitioners' evidentiary objections and motion to strike  
4 paragraphs 2, 3, 5, 6, and 7 of the Johnson Declaration, and the accompanying exhibits, should be  
5 denied, and these documents should be admitted for consideration of the Energy Companies' Motion for  
6 Leave to Intervene.

7 Respectfully submitted,

8 Dated: June 12, 2015

GIBSON, DUNN & CRUTCHER, LLP

9 By: 

Jeffrey D. Dintzer

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COMPANY

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